

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF TENNESSEE  
3 CHATTANOOGA

4 SHANDLE MARIE RILEY,

5 Plaintiff,

6 v.

Case No. 1:19-cv-304-TRM-CHS

7 HAMILTON COUNTY GOVERNMENT,

8 DANIEL WILKEY,  
9 individually and in his capacity as deputy sheriff  
10 for Hamilton County Government, and

11 JACOB GOFORTH,  
12 individually and in his capacity as deputy sheriff  
13 for Hamilton County Government,

14 Defendants.

15  
16 The above-captioned cause came on for  
17 hearing when and where the following proceedings which  
18 were transcribed from an audio recording were had:

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**A P P E A R A N C E S**

For the Plaintiffs:

**JOHN C. CAVETT, JR.**

**WILLIAM EUGENE KLAVER**

**JAMES F. EXUM**

**ROBIN FLORES**

**W. GERALD TIDWELL, JR.**

**JAMES MICAH GUSTER**

For the Defendants:

**R. DEE HOBBS**

**SHARON MILLING**

P R O C E E D I N G S

THE COURT: First of all, is the connection good?  
Is it -- is anyone having trouble hearing me?

UNIDENTIFIED MALE SPEAKER: I'm not, sir.

THE COURT: Okay.

UNIDENTIFIED MALE SPEAKER: No, sir.

THE COURT: Unless -- okay. I don't need  
responses from each of you, but do let us know if you're  
having trouble hearing at any point during the proceedings  
today.

Second thing I will tell you is that the  
courtroom is empty. Everyone has elected, I believe, to  
participate by telephone including I believe we have -- we  
may have some reporters -- news reporters in. Everybody  
will identify themselves in a moment.

I wanted to talk about some house rules to make  
sure that everything proceeds smoothly. Number one, I'm  
going to ask people each time they speak to first identify  
themselves even if you've just spoken, you know, a moment  
before and then somebody else has spoken, I need you to  
identify yourselves each time that you're speaking so that  
we can keep the cast of characters straight.

The -- let me ask this, is there a court reporter  
covering this hearing today?

1 UNIDENTIFIED MALE SPEAKER: I do not have  
2 one, Judge.

3 THE COURT: There's no court reporter. Okay.  
4 All right. Are there any news reporters on the line  
5 with us?

6 MR. JACKSON: Yes, this is Dan Jackson with  
7 Courthouse News Service.

8 UNIDENTIFIED FEMALE SPEAKER: This is  
9 Roseanne --

10 THE COURT: Okay.

11 UNIDENTIFIED FEMALE SPEAKER: (Inaudible)  
12 Free Press.

13 THE COURT: Mr. Jackson, thank you. And I'm  
14 sorry, I spoke over you, ma'am. What's your name?

15 UNIDENTIFIED FEMALE SPEAKER: Roseanne  
16 (inaudible due to cross talking) with the Times Free  
17 Press.

18 THE COURT: Okay. Thank you. So at the  
19 outset, again, just doing some housekeeping.  
20 Mr. Jackson had reached out to the Court yesterday  
21 because he wanted to know whether he could attend in  
22 person or participate by telephone. And we -- I  
23 called him and laid out those options. Mr. Jackson  
24 raised a good question that I was not in a position to  
25 address when he asked me last night. He is aware of

1 the local rule that prohibits bringing a recording  
2 device into the courtroom and activating it and  
3 recording the proceedings. And he asked me whether  
4 since he's not going to be in the courthouse he could  
5 record the proceedings on his iPhone or recording --  
6 otherwise on a recording device.

7 Frankly, I never thought about that and  
8 looked at the local rules and then put out an email to  
9 the other judges in our -- some -- most of the other  
10 judges in our district and division.

11 And what followed was a robust discussion of  
12 the topic, but for -- the judge has discretion, and  
13 the consensus among the judges is that we should treat  
14 these telephonic hearings, which are being done right  
15 now because of the exigent circumstances involving the  
16 Covid 19 pandemic, we should treat the telephonic  
17 hearings the same as we treat in-court hearings.

18 And consequently I would ask the reporters to  
19 turn -- to off their recorders and not -- not record  
20 the hearing today. We would extend the local rule to  
21 these telephonic hearings. So I'll put you on your  
22 honor, news reporters, and just ask you to do that.  
23 So --

24 MR. JACKSON: That's understood.

25 THE COURT: The next thing I'd like to do is

1 have the attorneys and any other participants identify  
2 themselves. But why don't we start with the  
3 Plaintiff's attorneys and any folks who are here as  
4 Plaintiffs or Plaintiff representatives.

5 And Mr. Flores, I suppose we'll start with  
6 you. Go ahead.

7 MR. FLORES: Yes, sir. Robin Flores for  
8 Plaintiff. And shall I list all of them, Your Honor?

9 THE COURT: Well, you don't need to tell me  
10 everyone you represent. Just, do you have any -- or  
11 are any of the Plaintiffs participating in this call  
12 with you?

13 MR. FLORES: No, Your Honor, I'm here on my  
14 office phone.

15 THE COURT: Okay. So, Mr. Flores. Who else  
16 is here about half of a Plaintiff?

17 MR. KLAVER: I'm representing myself, Your  
18 Honor, William Klaver, case 119-CV-198.

19 THE COURT: Okay. Mr. Klaver, thank you,  
20 sir.

21 And is John Cavett on the line with us today?

22 UNIDENTIFIED MALE SPEAKER: I do not hear  
23 him, Judge. I'm going to call his office and see --  
24 maybe he thought it was a different time. I'm only  
25 taking a guess here.

1 THE COURT: Yeah. I would expect Mr. Cavett  
2 to be on the line with us.

3 UNIDENTIFIED MALE SPEAKER: Yes, Your Honor.  
4 Let me see what I can do to get him.

5 THE COURT: Okay. Who is -- are there any  
6 individual Plaintiffs who are on the line today? Or  
7 relatives of Plaintiffs?

8 MR. KLAVER: Just myself, Your Honor, William  
9 Klaver.

10 THE COURT: Yes, I got you Mr. Klaver. But I  
11 was wondering if there was any others who haven't  
12 identified themselves. Okay.

13 MR. KLAVER: Okay. Thank you.

14 THE COURT: And -- and who is here on -- who  
15 is here on behalf of the -- just a second.

16 MR. FLORES: This is Robin Flores for  
17 everyone. I'm going to go to mute on my cell phone  
18 while I try on my office phone to get a hold of  
19 Mr. Cavett.

20 THE COURT: Okay. Let us know when you're  
21 back, Mr. Flores.

22 Who's here behalf of Hamilton County?

23 MR. HOBBS: Dee Hobbs.

24 MS. MILLING: And Sharon Milling also.

25 THE COURT: All right. Thank you, Counsel.

1 All right. And then we have other  
2 Defendants. Go ahead and identify yourselves.

3 MR. TIDWELL: Your Honor, this is Jerry  
4 Tidwell. I'm here for Bobby Brewer, Deputy Bobby  
5 Brewer, Deputy Jacob Goforth, and Deputy Colin McRae.  
6 And my representation covers several of the individual  
7 suits. (Inaudible) I believe (inaudible) in another  
8 suit, but I don't represent him.

9 THE COURT: Okay.

10 MR. EXUM: Your Honor, this is Jim Exum on  
11 behalf of Deputy Daniel Wilkey, and I represent him in  
12 the Shandle Riley, Janice Mitchell, and Kelsey Wilson  
13 matters.

14 THE COURT: All right. Thank you.

15 MR. GUSTER: This is attorney Micah Guster  
16 for Daniel Wilkey in Klaver's case and the  
17 (inaudible,) Your Honor.

18 THE COURT: Okay. Thank you. Micah  
19 Custer -- Guster.

20 I was telling my court deputy, Mr. Guster, he  
21 -- she didn't hear your name, so that's why I repeated  
22 it.

23 Are there any other attorneys on the line?

24 MR. FLORES: Your Honor, this is Robin  
25 Flores. I just got a hold of Mr. Cavett. They're



1     working, like we are, long distance. He is attempting  
2     to call as we speak, so hopefully we'll hear from him  
3     in the next couple minutes.

4             THE COURT: All right. He's -- he's got  
5     the -- you gave me a call-in number?

6             MR. FLORES: Yes -- yes, Your Honor. I gave  
7     him the call-in number and my code. I assume it's the  
8     same for everybody.

9             THE COURT: It should be.

10            All right. Everybody sit tight for a second,  
11     and let's let Mr. Cavett call in.

12            MR. FLORES: Judge, I'm get someone at my  
13     door. I'm going to put this on mute, and I'll be  
14     right back.

15            THE COURT: All right. Thank you. All  
16     right.

17            MR. CAVETT: Hello, everybody. I'm in  
18     trouble, ain't I?

19            THE COURT: No, that's all right. Is -- is  
20     this Mr. Cavett?

21            MR. CAVETT: Yes, sir.

22            THE COURT: All right. Mr. Cavett, this is  
23     Judge Steger. We have on the line reporters -- two  
24     reporters. Then we have as counsel Robin Flores. We  
25     also have Mr. Klaver representing himself, Dee

1 Hobbs -- Dee Hobbs and Sharon Milling on behalf of the  
2 County, Jerry Tidwell --

3 MR. CAVETT: All right.

4 THE COURT: I tell you, Mr. Cavett, just  
5 because we're on the phone, why don't you not -- you  
6 don't have to agree with me, because we'll end up  
7 talking over each other.

8 So Jerry Tidwell is representing some of the  
9 individual sheriff's deputies. Jim Exum is  
10 representing Officer Wilkey in some of the cases, and  
11 Micah Guster is representing Officer Wilkey, also, in  
12 another case or cases.

13 So that -- those are all of the people  
14 identified as being on the call at this point. And we  
15 haven't gotten into any of the substance of the  
16 hearing. What I did say to everybody, Mr. Cavett, is  
17 that because we have so many people on the call, I'm  
18 going to ask that each person identified themselves  
19 before they speak, even if they -- and every time you  
20 speak, you need to identify yourself so that we know  
21 who is speaking.

22 So let me just ask, Mr. Flores, are you back  
23 on the line?

24 MR. FLORES: Yes, Your Honor.

25 THE COURT: All right. Counsel --

1 MR. FLORES: Yes, Your Honor, I'm back on the  
2 line.

3 THE COURT: All right. I'm ready to proceed.  
4 Is there -- are there any preliminary matters that any  
5 of you feel like must urgently be taken up before we  
6 get into a discussion of the motions?

7 All right. I hear nothing, so I am going to  
8 do some stage setting to perhaps eliminate some of the  
9 discussion that might otherwise need to take place.

10 There are two motions pending before the  
11 Court. That's why we're having this hearing today.  
12 There is a motion filed on behalf of Shandle Riley by  
13 Mr. Flores. It's a motion for an order requiring  
14 Hamilton County to preserve electronic evidence and  
15 data and for an order allowing the Plaintiff to  
16 conduct a forensic examination of all computers and  
17 data preserving devices involved with the transmission  
18 and preservation of in-car video created by Hamilton  
19 County deputies.

20 I'll summarize that a little bit because it's  
21 a long caption, but that's the relief requested in the  
22 motion. There is an identical -- virtually identical  
23 motion filed on the same date, February 28, by  
24 Mr. Cavett, and that is on behalf of Maxwell Jarnigan.  
25 And that was joined in -- that motion was also filed

1 by Mr. Biggs, Mr. Cavett's co-counsel.

2 I have, of course, read these motions and  
3 accompanying memoranda of law. I have looked at the  
4 docket yesterday. I do not see that Hamilton County  
5 has filed a written response to either of these  
6 motions.

7 Mr. Hobbs, would you confirm that Hamilton  
8 County has not filed a written response to these  
9 motions?

10 MR. HOBBS: We have not.

11 THE COURT: All right. So the -- the  
12 reason -- the reason for these motions is that at some  
13 point Plaintiff's counsel learned that a server  
14 operated by the Hamilton County Sheriff's Department  
15 containing in-car video footage from the Sheriff's  
16 Department had experienced a software failure and that  
17 resulted in the loss of in-car video footage from  
18 October 25, 2018 to January 23, 2020.

19 And apparently included all video footage on  
20 that server during that time period. Apparently a new  
21 server was built, and so video footage -- in-car video  
22 footage from January 23, 2020 to present is being  
23 stored again.

24 Hamilton County has done some internal  
25 investigation to determine what caused the server to

1 fail and the video footage to be lost. And I'll just  
2 leave it at that for the moment. For right now it  
3 appears that much of the video footage is indeed a  
4 lost.

5 So against that backdrop, we have nine  
6 different lawsuits which were filed, and I believe  
7 that Mr. Klaver's was first. His was filed on July 9,  
8 2019. And then there are eight other lawsuits filed.  
9 Mr. Flores I believe represents the Plaintiffs in  
10 seven of those lawsuits, and Mr. Cavett represents a  
11 Plaintiff in one of those lawsuits and has filed it as  
12 a class action or punitive class action.

13 These lawsuits as I indicated, Mr. Klaver's  
14 was the first lawsuit filed, and it was filed on July  
15 9, 2019. The other lawsuits were filed over a period  
16 of time with the last lawsuit being filed on December  
17 17, 2019.

18 So with the last lawsuit being filed on  
19 December 17, 2019, a question arises in my mind that I  
20 don't have an answer to, so I'm going to -- I'm not  
21 going to invite a discussion yet or argument, but I am  
22 going to ask question to Mr. Hobbs.

23 It -- it would appear to me that since the --  
24 all the video footage in the server was lost  
25 through -- from October 2018 through January 23, 2020

1     that the server failure occurred on January 23, 2020.  
2     But I don't have anything before me that confirms  
3     that, so I'm going to ask Mr. Hobbs now or  
4     Ms. Milling, is that the date that the server failed  
5     and the footage was lost?

6             MR. HOBBS: That is our information.

7             THE COURT: Okay. So generally speaking, a  
8     party's duty to preserve evidence arises when a party  
9     has a reasonable anticipation of litigation. And it  
10    arises in any event no later than when the person is  
11    sued, that is when there is notice of the commencement  
12    of litigation.

13            So the duty to preserve evidence arises at  
14    that time. So between July of 2019 and December of  
15    2019, there were nine lawsuits filed, all of which  
16    named Deputy Daniel Wilkey -- I believe, all or most  
17    of which involved traffic stops which the Plaintiffs  
18    allege were conducted illegally in violation of their  
19    civil rights with various different kinds of facts and  
20    nuances.

21            But when the County learned of these series  
22    of lawsuits, it created an affirmative obligation --  
23    affirmative obligation on the County to preserve  
24    evidence. And given the fact that these patrol cars  
25    that -- or patrol car that were the subject of various

1     allegations in the complaints were equipped with  
2     video dash cams, it -- it seems logical that the  
3     County was under a duty to preserve evidence of the  
4     video dash cams as a result of these lawsuits.

5             And there are two things that that obligation  
6     involves. Generally, the first thing that needs to  
7     happen is a written litigation hold needs to be  
8     issued. And that hold is supposed to go to -- the  
9     written litigation hold is supposed to go to  
10    individual custodians believed to possess relative  
11    material. And it's supposed to advise them to  
12    preserve the relevant material. It's supposed to give  
13    them specific instruction about that.

14            And so to the extent that -- to the extent  
15    that there were emails or written communications or  
16    reports filled out relating to these traffic stops and  
17    other incidents in which Daniel Wilkey and other named  
18    Defendant deputy -- deputies were named, all -- all of  
19    those custodians should have been placed on notice  
20    that they needed to retain their documents and videos.

21            And to the extent that those deputies,  
22    officers were to turn in reports in certain  
23    repositories, whether electronically or paper copies,  
24    the custodians of those records should have been  
25    notified that there -- that they were subject to

1 litigation hold, that those records needed to be  
2 preserved.

3 And whomever had custody of the dash-cam  
4 videos and certainly if there were any body-cam videos  
5 or any other recordings of these events which are  
6 involved in the lawsuit, various lawsuits, those  
7 persons should have been provided written notification  
8 that they needed to preserve the evidence they had in  
9 their custody.

10 So that's the first step that is supposed to  
11 be adhered to when litigation is anticipated and  
12 certainly after it is filed.

13 The next thing that is supposed to be done  
14 with respect to electronically stored information,  
15 which is commonly referred to as ESI, is collection.  
16 Such that to avoid losing emails, videotapes,  
17 recordings, any other documents or data that is  
18 preserved electronically, collection is supposed to  
19 be -- is supposed to take place such that if you have  
20 a recording that is over written in a loop, you want  
21 to preempt it being overwritten. So you want to go  
22 capture that before the overriding takes place. Or if  
23 you have data on a hard drive that could be  
24 susceptible to being deleted, you would go make a copy  
25 of the hard drive to make sure that you're storing it



1       someplace secure.

2               And if you have a server that contains a  
3       bunch of data, normally what you would do is you would  
4       go to that server, you would identify the video  
5       evidence that -- that could be susceptible to being  
6       lost for whatever reason and you would copy it onto a  
7       hard drive, onto another server, onto something that  
8       would preserve it for litigation purposes.

9               And that's a duty that all attorneys have in  
10       all litigation, to impose a litigation hold and then  
11       to take reasonable efforts to assure that evidence is  
12       not lost.

13              So the first question I've got, and this  
14       relates to rule -- Federal Rule of Civil Procedure  
15       37(e), which specifically addresses the failure to  
16       preserve electronically stored information.

17              The preamble to that rule provides if  
18       electronically stored information that should have  
19       been preserved in the anticipation or conduct of  
20       litigation is lost because a party failed to take  
21       reasonable steps to preserve it, and it cannot be  
22       restored or replaced through additional discovery,  
23       then it sets forth a list of things the Court can do.

24              But the first question that needs to be  
25       asked -- the first question that needs to be asked is,

1 is it truly lost. So far the County is telling us  
2 that the video footage is lost. But we need to -- the  
3 Court is not going to be satisfied with a simple  
4 representation that it is, and that's something we're  
5 going to discuss. We really need to find out if it's  
6 truly lost, or whether there's any possible way it  
7 could be recovered.

8 The second thing we need to determine is  
9 whether it was lost because a party failed to take  
10 reasonable steps to preserve it.

11 And then the third thing that we need to look  
12 at is, is there any way for us to restore or replace  
13 through additional discovery the evidence that was  
14 lost.

15 So I know -- the first part of this rule,  
16 this electronically stored information these -- this  
17 video footage of Mr. Wilkey and other deputies making  
18 traffic stops interacting with the Plaintiffs in these  
19 cases, there is no question that that should have been  
20 preserved. That's -- it would be hard to argue  
21 there's anymore evidence that could possibly be more  
22 relevant to these cases.

23 The second part of this analysis, was this  
24 evidence lost because a party failed to take  
25 reasonable steps to preserve it. Well, in answer to

1 that, the Court has no idea. And the reason the Court  
2 has no idea is because the County has not given the  
3 Court any information in response to these motions.

4 I don't know sitting here today whether any  
5 written litigation holds were put in place when these  
6 series of lawsuits were filed. None have been  
7 produced. I don't know whether any measures were  
8 taken by the Hamilton County Sheriff's Department to  
9 preserve evidence that was to identify and preserve  
10 evidence that was relevant to the claims of these nine  
11 different lawsuits.

12 And I guess that's our starting point. So  
13 Mr. Hobbs and Ms. Milling, I need an explanation as to  
14 what steps were taken to preserve this evidence by way  
15 of litigation holds, and then there's a practical  
16 matter, what steps were actually then implemented to  
17 preserve the evidence that's relevant to these claims.

18 MR. HOBBS: Your Honor, we told you at the  
19 previous hearing that we believed we had preserved,  
20 prior to the loss, the general data loss, copies of  
21 information. We have at least 180 hours of video  
22 preserved. The problem is that the originating source  
23 has disappeared, not -- and we said this, Your Honor,  
24 at a previous hearing.

25 So there was certainly efforts made to

1     preserve this information. That's number one. Number  
2     two, what we did is what we would do in any case where  
3     there's a request for preservation or a lawsuit filed.  
4     We will contact, as we did in this circumstance, the  
5     sheriff's office, relate these events, the date, and  
6     as much information as we can so that a litigation  
7     hold can be created.

8             And, in fact, in this case I cannot represent  
9     because I do not know if all -- literally, all  
10    information regarding these cases was preserved.  
11    However, I can assure you it is a matter of public  
12    record that information -- video relative to Daniel  
13    Wilkey was, in fact, preserved. It was in the public  
14    domain.

15            So the short answer to your question, yes,  
16    copies of information was made. Two, efforts were  
17    made to preserve the information. Three, that is not  
18    really the problem here. The problem here is that  
19    requests are being made for events other than these  
20    cases in order to try to develop some claim of a  
21    custom or practice of unconstitutional conduct.

22            And when it comes to that, for instance,  
23    Officer Sharon Milling's beating of someone on January  
24    1st of 2020, any car video or any dash-cam or any  
25    body-cam information would not be preserved at present

1       because the system failed.

2               I hope the Court understands what I'm saying.

3               THE COURT:   Well, let's backup to what you  
4       are saying.   You indicated just now that there are --  
5       there exists 180 hours of video footage.   You still  
6       have that?

7               MS. MILLING:   At least, Your Honor.

8               THE COURT:   And does that -- does that video  
9       footage capture all of the traffic stops that  
10      Mr. Wilkey made that are the subject of these  
11      lawsuits?

12              MS. MILLING:   Do not know that yet.

13              MR. HOBBS:    But, Your Honor, we are informed  
14      that is what it is and that we were able to do that  
15      prior to the system, this underlying system fail.

16              THE COURT:    And how did -- how did you go  
17      about doing that, Mr. Hobbs, or how did the County do  
18      that?   How did they extricate -- who did it, and what  
19      sort of search parameters did they run to get  
20      information relevant to these, I'm going to call them  
21      the nine Daniel Wilkey lawsuits?

22              MS. MILLING:   Your Honor, this is Sharon  
23      Milling.   My understanding, and this comes from the IT  
24      department of the sheriff's office, is that they were  
25      requested by the district attorneys office to be able

1 to view a certain portion back. I want to say it was  
2 a year back, but I'm not sure about that. At the time  
3 that all this first started coming up in the press and  
4 the DA's office wanted to look back that far, and they  
5 made that accessible to the DA, and it was preserved.  
6 All of that was preserved is my understanding.

7 THE COURT: Have you had discussions with  
8 Plaintiff's counsel in these cases to let them know  
9 that that video footage is available for them to  
10 review?

11 MS. MILLING: I can't -- I can't remember if  
12 I have or not, Your Honor. I don't believe I have  
13 with Mr. Cavett. I'm not certain about Mr. Flores.  
14 We talked a lot.

15 MR. FLORES: Your Honor, this is Robin  
16 Flores. In response to my friend and colleague,  
17 Ms. Milling, we did have a very specific discussion  
18 about a case that is now been removed, which this  
19 particular issue is going to rise in the (inaudible)  
20 bond matter.

21 Otherwise I do have -- I have attached to  
22 document 50 in my brief the efforts that I've made in  
23 preserving the evidence at least in the Riley matter.  
24 That's the extent that I have diaries as being  
25 discussions about this video loss at this point.

1           THE COURT: All right. So, Mr. Hobbs and  
2           Ms. Milling, it's your understanding that after these  
3           lawsuits arose sequentially, you had notified --  
4           Mr. Hobbs, you had notified the County that they  
5           needed to preserve evidence; is that correct?

6           MR. HOBBS: Yes, Your Honor.

7           THE COURT: And how do you do that,  
8           Mr. Hobbs? Did you just call them and tell them, or  
9           do you issue a written litigation hold?

10          MR. HOBBS: We call them and tell them, Your  
11          Honor.

12          THE COURT: And do they generate any written  
13          litigation hold as a result of the conversation with  
14          you?

15          MR. HOBBS: No, Your Honor. They endeavor to  
16          send us the records that we ask for or that we ask to  
17          be preserved.

18          THE COURT: And those are --

19          MR. HOBBS: And, Your Honor, if I may, I  
20          cannot represent that all possible information, video  
21          information relative to do these cases was preserved.  
22          However, I can tell you that substantial information  
23          regarding this litigation -- each of these cases, has  
24          been preserved.

25          And, again -- again, sequentially, how -- whether

1     this is before the DA requested the information or  
2     afterwards, I do not recall, but we had occasion as  
3     did the DA, to request a substantial amount of video.

4             We do not know -- we do not know that any video  
5     regarding these cases -- these cases, the particular  
6     transactions, are lost whatsoever. That isn't the  
7     problem, and that's what were trying to say. The  
8     problem is we have an overall data loss.

9             THE COURT: So is it fair to say, Mr. Hobbs,  
10    that nobody has gone back to -- to your knowledge, to  
11    review the video footage that you do have, you said  
12    you had 180 hours, nobody has gone back to look at  
13    that to determine whether it does reflect the  
14    incidents which are the subject of these nine  
15    different lawsuits against Mr. Wilkey and others?

16            MR. HOBBS: Not -- not as of yet. And you  
17    would recall the Court directed us not -- I call it  
18    the mother system or mothership -- we were  
19    specifically directed not to make any -- put any hands  
20    on the mothership in any regard, and we have not.

21            THE COURT: Well, the mothership is --

22            MR. HOBBS: (Inaudible due to cross talking.)

23            THE COURT: -- you're referring to the --  
24    hang on.

25            The -- the colloquial term, the "mothership"



1     that you're referring to refers to the server that  
2     failed. And what I was talking to you about was I  
3     didn't want anybody making any changes to that server,  
4     because part of what we need to talk about is having  
5     an independent forensic examiner come in and determine  
6     whether it failed for the reason that the County said  
7     that it failed, or whether failed for some other  
8     reason.

9             But I wasn't -- where -- where are these --  
10     presumably the 180 hours of footage that you say were  
11     preserved, were not preserved on a broken server.  
12     Where are those being kept?

13            MS. MILLING: They are preserved on a  
14     terabyte thumb drive.

15            THE COURT: Say that again, Ms. Milling.  
16     Somebody was -- try to avoid the background noise.  
17     Go ahead.

18            MR. HOBBS: A terabyte external hard drive,  
19     Your Honor.

20            THE COURT: Where's that hard drive being  
21     kept?

22            MS. MILLING: Right now it's at the sheriff's  
23     office.

24            THE COURT: All right. So there's -- there's  
25     one copy of it on a disk?

1 MS. MILLING: It's on a hard drive, and I  
2 believe the hard drive has been provided to  
3 Mr. Wilkey's attorney, Mr. McGowan.

4 THE COURT: All right. But --

5 MR. CAVETT: Your Honor, this is John Cavett.  
6 Can I ask a question for clarification purposes. When  
7 using the language all evidence relevant to these  
8 cases and we're talking about 180 hours of recordings,  
9 my question is, do -- does the DA's office have or the  
10 terabyte drive have all of Wilkey's video-cam arrests  
11 for the year preceding, say, December 2019, or are we  
12 just talking about the named Plaintiffs? Because I  
13 can say that the evidence in my case is far more than  
14 that, which relates just to the just to the named  
15 Plaintiffs.

16 And I don't know whether 180 hours is  
17 everything the man -- every arrest the man made or  
18 not, that's (inaudible) the Court to make.

19 THE COURT: Mr. Cavett, what I understood  
20 Mr. Hobbs and Ms. Milling to say is that they don't  
21 know.

22 MR. CAVETT: Okay. I'm happy with that. I  
23 understand that.

24 UNIDENTIFIED MALE SPEAKER: And, Your  
25 Honor -- Your Honor, I'll go so far as to say that

1     when we receive a litigation hold, or when a lawsuit  
2     is filed, we do not ask the sheriff's office to  
3     preserve all information that metaphysically might  
4     result in (inaudible) for a person making a custom  
5     practices and procedure claim.

6             I will -- I will -- I will tell you that if  
7     someone wants to allege and they want to prove their  
8     case against a municipal defendant such as Hamilton  
9     County by asking for a thousand other arrests to show  
10    them we don't properly train, no. We've never made  
11    such a preservation request.

12            THE COURT: Yeah, well -- yeah, I understand  
13    that.

14            UNIDENTIFIED MALE SPEAKER: I believe we  
15    have -- I believe we have ,on hand, available, video  
16    information relevant to these cases. That is what we  
17    typically would ask for, and that is what we typically  
18    would receive. It would not be unusual as discovery  
19    proceeds in a case to realize that we might have a  
20    need to go back and obtain other information regarding  
21    other events. That is what we apparently cannot do  
22    right now.

23            MR. FLORES: Your Honor, this is Robin  
24    Flores, and a couple things I'm going to say I don't  
25    want it to seem like I'm, you know, taking any attacks

1     against the County attorneys here. I consider them my  
2     friends and colleagues.

3             But there's something real pointed that I've  
4     got -- a point I've got to make here is -- and the  
5     document 50 that I filed I attached some exhibits.  
6     And early on in the Riley matter I sent a spoliation  
7     request out by certified mail which is pretty specific  
8     as to what I'm looking for. And then a request for  
9     production, which the County is yet to answer. And  
10    that was back in October 2nd. And that -- that's  
11    document 54, and it -- it focuses on specific video  
12    footage.

13            My concern is that I don't know if this has  
14    been preserved or not. Ms. Milling did send me a  
15    response email to my spoliation demand, but, you know,  
16    here we are now in March or April, and I still don't  
17    have anything responsive to the request for  
18    production, and now I'm hearing that maybe the  
19    district attorney may be the sole source or the County  
20    has got these things somewhere and has yet to respond.

21            So I want to make sure that point -- you  
22    know, that that point is out there in regard to at  
23    least my end, I requested to preserve this evidence,  
24    and we don't lose sight of that.

25            MR. HOBBS: I -- Ms. Milling needs to respond

1 to that, Your Honor.

2 MS. MILLING: Your Honor, I don't think we  
3 said that the DA was the sole source.

4 THE COURT: You didn't. You said the County  
5 has the hard drive.

6 MS. MILLING: And also, Your Honor, there's  
7 been an issue with the District Attorney's Office as  
8 far as what we have been able to release and what we  
9 have not been able to release. There's been some  
10 discrepancy about the different case law that we  
11 filed.

12 In fact, there was one -- I can't remember  
13 which one it was, it may have even been Riley, but we  
14 were intending to release, and then the DA's office  
15 called, and -- and we were told not to release.

16 MR. HOBBS: That is correct, Your Honor. I  
17 will confirm that. I got that (inaudible) from  
18 Mr. Pinkston (phonetic) --

19 UNIDENTIFIED MALE SPEAKER: And would -- I'm  
20 sorry I didn't mean to speak over you.

21 MR. HOBBS: I got the call from Mr. Pinkston,  
22 and I'll be honest, the only thing I remember it was  
23 about was Wilkey. I do not -- I do not right offhand  
24 recall which of these nine or ten plaintiffs against  
25 Mr. Wilkey it pertained to.

1 I frankly protested due to the fact that  
2 other video had obviously been released by the  
3 district attorney, because it's been on television.  
4 You know, I don't get it. But I'm sorry, and it does  
5 I -- I -- I respect that Mr. (inaudible) is entitled  
6 to the information. I didn't question it. But -- but  
7 I don't know the DA's the only source of information.

8 THE COURT: Well, we're speaking in the  
9 abstract now. I don't know what information the  
10 district attorney could have that was not furnished to  
11 it by Hamilton County, the Hamilton County Sheriff's  
12 Department.

13 UNIDENTIFIED MALE SPEAKER: That -- that  
14 video.

15 THE COURT: Well --

16 UNIDENTIFIED MALE SPEAKER: Your Honor --

17 THE COURT: I'm not -- no requests are being  
18 made at this point to my knowledge from the -- from  
19 the District Attorney's Office. The requests are  
20 going to be made from Hamilton County Sheriff's  
21 Department. And -- and I assume that if Hamilton  
22 County Sheriff's Department produced some information  
23 to the district attorney, it didn't disgorge all of  
24 its originals and fail to keep copies. Do you think  
25 that's what happened? Do you think that --

1 UNIDENTIFIED MALE SPEAKER: Yes, Your Honor.  
2 Yes, Your Honor, exactly.

3 THE COURT: You -- you think that -- the  
4 Hamilton County Sheriff's Department did not keep  
5 copies of the documents and videos that he gave to the  
6 District Attorney's Office?

7 UNIDENTIFIED MALE SPEAKER: We -- we kept  
8 them, Your Honor.

9 THE COURT: Who -- I'm sorry say it again.

10 UNIDENTIFIED MALE SPEAKER: We kept them.  
11 The sheriff's office.

12 THE COURT: Okay. The sheriff's department  
13 has them? And -- are you telling me that the district  
14 attorney is telling you or telling the County that it  
15 cannot produce materials relating to the Wilkey case  
16 to the Plaintiff's counsel in the Wilkey case?

17 UNIDENTIFIED MALE SPEAKER: Pending the  
18 charges against Mr. Wilkey, we were told then not to  
19 give that information -- we were told not to review  
20 that information, obtain that information, disseminate  
21 that information.

22 THE COURT: All right. Well, we'll work  
23 through -- we'll work through that. That's a -- if  
24 you get in a conflict between what your obligations  
25 are here in federal court in compliance with discovery

1 and what the DA's telling you to do, we'll just have  
2 to work that out. That's not really the purpose of  
3 this hearing today.

4 UNIDENTIFIED MALE SPEAKER: And, Your Honor,  
5 let me state, I don't think that is a problem at this  
6 point because now the grand jury's been trying to  
7 indict, so I think we're beyond that.

8 THE COURT: Yeah, I think so.

9 UNIDENTIFIED MALE SPEAKER: That -- that was  
10 a problem some time ago.

11 THE COURT: All right. All right, counsel,  
12 what we need to do is we need to determine what  
13 evidence that is relevant to this case, to these nine  
14 lawsuits, has been lost. If all of the evidence that  
15 is relevant to the lawsuits that are pending before  
16 this court still exist and is still in the custody and  
17 control of the Hamilton County government, then we  
18 don't have a problem.

19 But if some of this evidence, which should  
20 have been preserved, has been lost, then we need to  
21 work through that. That is a problem. What I'm  
22 realizing from this hearing today is that nobody on  
23 the call can tell me whether evidence related to the  
24 Daniel Wilkey lawsuits has, in fact, been lost.

25 UNIDENTIFIED MALE SPEAKER: (Inaudible due to



1 cross talking.)

2 MR. FLORES: Your Honor, it's Robin Flores.  
3 We are almost -- Your Honor, this very issue seems  
4 almost circular to me because in -- (inaudible due to  
5 cross talking) Judge I got a little benefit and that I  
6 have participated with my clients in, you know, the  
7 criminal investigation. So I'm aware and I had a  
8 request from the district attorney not to disclose the  
9 contents of those interviews, but I am aware that  
10 there is over 500 hours of video recordings that the  
11 district attorney had difficulty getting from the  
12 sheriff. And, in fact, had to use -- say, you got  
13 problems with your recording, you know, being able to  
14 pull these recordings up, we'll get TBI to come out  
15 there and look at the equipment and get it.

16 And then shortly after that, the County  
17 produced 500-something hours of videos. But the  
18 problem I've got on my end as Plaintiffs counsel in  
19 the civil case --

20 THE COURT: Wait -- wait a minute,  
21 Mr. Flores. Did you -- you said audio recordings at  
22 one point, and then you said videos. Are you --

23 MR. FLORES: Well, video. Video. My  
24 apology. I -- I'm interchanging the terms the same,  
25 the same subject matter.

1           THE COURT:   Okay.   This is -- this is new  
2   information.   Are you telling me that the district  
3   attorney was able to obtain 500 hours of video footage  
4   relating to traffic stops by sheriff's deputies?

5           MR. FLORES:   Yes -- yes, Your Honor.

6           THE COURT:   500 hours?

7           MR. FLORES:   Approximately -- the number --  
8   it was it was a little more than that.

9           THE COURT:   Did you -- did you talk to the  
10   sheriff's department -- excuse me -- to the DA about  
11   whether that encompassed all of the Daniel Wilkey  
12   traffic stops?

13          MR. FLORES:   That, as I understand it from  
14   Tom Landis (phonetic), who is the assistant district  
15   attorney that's taken the lead on -- on --  
16   prosecution, is that it is -- it does encompass  
17   traffic stops.

18          The content of it -- of -- are also the  
19   transportations of particular individuals, which I  
20   believe was the basis for the reckless endangerment  
21   and reckless driving charge.

22          The problem I've got as Plaintiff's counsel,  
23   is access and usability of that being able to use  
24   that.   For example, when -- I think the request for --  
25   that Mr. Hobbs was talking about where the DA got an

1 opinion from the state attorney general in whether  
2 they disclose or disseminate information or video, I  
3 think that was a request from the media if memory  
4 serves me and not so much from me.

5 The problem I have with getting this evidence  
6 is if the district attorney seems to be the sole  
7 source of getting this video, we're going to have a  
8 devil of a time forcing the DA, who is not a party, to  
9 disclose that to us.

10 So even if the DA's got all this, it's not  
11 the DA's duty to preserve and present that evidence,  
12 it's the County. And early on in this case, I've done  
13 what I needed to do to try to get the County to  
14 preserve that and then we find out from this letter in  
15 the Janice Hines (phonetic) matter that there's a  
16 problem with it.

17 So I think there's more than 180 hours that  
18 needs have been preserved and protected, and I'm  
19 hearing that that's all that's been preserved so far.  
20 I think there's more, and that would give more to John  
21 Cavett's class-action. So I'll leave it at that.

22 THE COURT: Well, let me ask -- let me ask  
23 Mr. Hobbs and Ms. Millings. Mr. Flores has indicated  
24 that the DA -- the DA's office has told him that they  
25 have over 500 hours of video footage from the

1       sheriff's department. And what I'm hearing from the  
2       two of you is that you believe that there are only 180  
3       hours of video footage preserved.

4               MR. HOBBS: Your Honor, the term -- the term  
5       was "at least." We don't know. Not -- I don't know  
6       how many hours. I don't know.

7               MR. CAVETT: Your Honor, John Cavett. I also  
8       wonder whether the disparity in numbers -- you know,  
9       at one point we're talking about dash-cam footage.  
10      But these officers have cameras on their bodies.  
11      There's -- there's cameras in the cars that are  
12      sometimes pointed back in the backseat and so forth so  
13      there may be a despair -- a disparity in that sense as  
14      well.

15              THE COURT: Yeah, let -- let's talk about  
16      that. The letter that I'm looking at the Mr. Flores  
17      has attached to his motion just talks about the failed  
18      server having lost in-car video. It -- it refers only  
19      to a data loss of in-car video footage.

20              Let -- let me ask this question first.  
21      Ms. Milling, Mr. Hobbs, is in-car video footage --  
22      does that -- is -- should that be interpreted broadly  
23      enough to also mean dash-cam video?

24              MS. MILLING: Your Honor, yes, Your Honor.  
25      In-car camera footage for County purposes, he has

1 dash-cam videos.

2 MR. HOBBS: Not body-cams.

3 MS. MILLING: Not body cameras. Again, the  
4 County does not have -- Sheriff's Office does not have  
5 cameras in the car on the rear seat like the city  
6 does, if that's what you're referring to.

7 THE COURT: Does it have any -- it doesn't  
8 have video facing -- looking at the backseat of the  
9 car, does it -- does it video the officer who's  
10 driving the car?

11 MS. MILLING: It does not.

12 THE COURT: Okay.

13 MS. MILLING: It is a dash-cam. It is  
14 looking out the front window.

15 THE COURT: All right. So the -- the video  
16 footage that was lost refers only to dash-cam videos;  
17 is that correct?

18 MS. MILLING: That -- well, not -- Your  
19 Honor, I think the system they were talking about also  
20 encompasses body camera video for those officers who  
21 have body camera video. My understanding is that none  
22 of the officers involved in these lawsuits had body  
23 cameras. They -- they had not been issued then  
24 because it has been -- they've been in beta testing.

25 THE COURT: All right.

1           MR. EXUM: Your Honor, this is Jim Exum. May  
2 I interject for just a moment?

3           THE COURT: Sure.

4           MR. EXUM: There's been a lot of talk this  
5 morning about 180 hours of video, which is 500. I  
6 want an absolute candor with the Court and the  
7 counsel. I have recently come into possession of a  
8 terabyte drive that has a great number of videos on  
9 it.

10           Now, I cannot estimate to the Court how many  
11 hours are on there. I have not had a chance to get  
12 through it. I only had about a week, and I don't know  
13 what's on there and what's not on there. So -- and  
14 this came from the DA's office as part of the  
15 discovery in the criminal matter involving Deputy  
16 Wilkey.

17           So I do have that drive, and, you know, if  
18 somebody asked me for it, I'd have to produce it as  
19 part of discovery in this case anyway, but I just want  
20 the Court to know that, that the DA is probably not  
21 the only source for that information.

22           At this point I cannot estimate what's on  
23 there, what's not on there. I assume all this came  
24 from the County at some point, but I just -- I  
25 don't -- there's a lot of files on there that I

1 don't -- I haven't looked at, and I don't know  
2 anything about them.

3 THE COURT: Mr. -- and Mr --

4 MR. FLORES: Your Honor, may I -- it's Robin  
5 Flores. May I ask Mr. Exum a question --

6 THE COURT: Well, let me ask him a question.  
7 Hang on, Mr. Flores.

8 Mr. Exum, is it your understanding that you  
9 have a copy of a hard drive that the DA maintained its  
10 own either the original or it's own copy?

11 MR. EXUM: Your Honor, I have a drive of  
12 videos that was produced as part of the discovery in  
13 Mr. Wilkey's criminal matter, which were given to  
14 Mr. McGowan.

15 THE COURT: Okay. Again, though, you don't  
16 think that you're in possession of the only version of  
17 those videos at this point; is that correct?

18 MR. EXUM: That's correct, I'm not.

19 THE COURT: All right.

20 MR. TIDWELL: Your Honor, if I could  
21 interject. This is Jerry Tidwell. I had a face-to-  
22 face conversation with Neil Pinkston in late December  
23 where he told me he possessed hundreds of hours of  
24 videos. He didn't tell me how many, but he said his  
25 staff looked at every single dash-cam video of Daniel

1 Wilkey for approximately a year.

2 When we had the last hearing in court, I sent  
3 him an email advising him that if he still had that  
4 stuff, he really needs to preserve it, which I didn't  
5 think was necessary, I'm sure they're preserving it.  
6 But he didn't respond to that email, but -- but he --  
7 I'm sure has that video, whatever it consists of.

8 MR. FLORES: Your Honor, it's Robin Flores.  
9 That's the -- pretty much the same information I got  
10 from Mr. Pinkston and Mr. Landis that Mr. Tidwell just  
11 imparted to the Court. And for about a year's  
12 worth -- the number 500-plus is specific to  
13 Mr. Landis's representation to me that he looked at  
14 and that the County -- the district attorney did split  
15 up -- out, you know, chunks of it between the various  
16 ADAs to review, because there is just so much.

17 So that -- that -- if Mr. Exum -- Your Honor,  
18 if I could get -- ask Mr. Exum a particular question  
19 because there's another issue that's coming up about  
20 footage that was created not on a dash-cam, and I  
21 believe may exist.

22 THE COURT: How is that footage supposedly  
23 prepared?

24 MR. FLORES: It was on a person's cell phone.  
25 And that would have been by Mr. Goforth in the Shandle



1 Riley matter.

2 MR. TIDWELL: Your Honor, this is Jerry  
3 Tidwell. I represent Goforth. He did, in fact, make  
4 a cell phone video of the actual baptism. He was  
5 asked to turn it over to the DA's office, which he  
6 did.

7 He no longer has a copy of it. I know a copy  
8 exists, and the DA described that video to me. And,  
9 actually, I've seen it. I know it exists. It's very  
10 short. It's less than two minutes.

11 THE COURT: Was that turned over to the DA's  
12 office before the lawsuit was filed against  
13 Mr. Goforth?

14 MR. TIDWELL: That's my understanding. When  
15 they were criminally investigating this case, he was  
16 ordered by -- he was interviewed by his superiors. He  
17 identified, I think, that he had a video. He then was  
18 instructed to turn it over to the DA's office.

19 And I don't know -- I -- and I'm trying to  
20 recall this. If I understand correctly, the DA's  
21 office to get off the phone themselves, and -- and  
22 made a copy. But I don't think it survived -- it does  
23 not survive on his phone, okay?

24 But -- but General Pinkston -- my purpose of  
25 my conversation with him was to find out if they could

1 tell me what they have, so I would know where to ask  
2 for it eventually whenever they could reveal some of  
3 their investigation. And it -- it exists, because I  
4 actually got to see it.

5 THE COURT: Okay. Well, Counsel, this is --  
6 this is productive. I started out by -- I started out  
7 where we should in this case, which is rule 37(e) of  
8 the Federal Rules of Civil Procedure.

9 And -- and we -- we have determined that  
10 certain information that should have been preserved  
11 has been lost. It was lost because of the failure of  
12 a server. And we'll talk a little bit more about that  
13 in a second, but under the rule what we need to do is  
14 determine whether the data that was lost can be  
15 restored or replaced through additional discovery.

16 And I'm hearing different bits of information  
17 as to how we might do that. But it sounds like much  
18 of the information that was on the server that failed  
19 had already been transferred to the district  
20 attorney's office prior to the failure of the server.

21 No -- no one on this call has been able to  
22 tell me whether all of the relevant footage from the  
23 various allegations against Mr. Wilkey and his  
24 codefendants is represented among the footage that is  
25 still available to some combination of Neil

1 Pinkerton's office and Hamilton County -- and Hamilton  
2 County's Sheriff's Office.

3 And then, of course, Mr. Tidwell, a video  
4 taken by Mr. Goforth of the baptism of Ms. Riley would  
5 obviously be extremely relevant to her claims against  
6 Mr. Goforth and Mr. Wilkey.

7 And so that's something that absolutely needs  
8 to be preserved and needs to be in connection with  
9 this lawsuit.

10 And so what -- what needs to happen here that  
11 has not happened thus far is -- is the attorneys for  
12 Hamilton County have got to figure out what  
13 information actually exists that -- that still exists  
14 either through some combination of the district  
15 attorney and their own archives that is relevant to  
16 these claims against Mr. Wilkey and his codefendants.

17 And right now, at least, Mr. Hobbs you raise  
18 this point. I'm not talking about pattern and  
19 practice allegations that would try to make relevant  
20 every alleged bad act that has ever occurred involving  
21 the Sheriff's Department. But what I am totally  
22 focused on is Hamilton County's duty to preserve all  
23 of the evidence that is relevant to these allegations  
24 against Daniel Wilkey and Deputy Goforth and any other  
25 individual deputies who have been named.

1           That -- that needs to be done and needs to be  
2           done immediately. That information needs to be  
3           compiled, it needs to be reviewed, and then you need  
4           to come back to me and tell me what's been lost and  
5           what hasn't been lost.

6           There -- there's no reason for the Court to  
7           be expending a lot of energy on trying to reconstruct  
8           this -- this evidence or figure out what was lost when  
9           the first thing that needs to happen is for you to  
10          look at what you already have the tell the Court  
11          what's been lost and what hasn't been lost.

12          So that needs to be done. The second thing  
13          that I think needs to be done from a standpoint of  
14          public confidence is to assure that the failure of  
15          this server happened in the normal course of things  
16          and that it wasn't a deliberate effort by somebody to  
17          get rid of evidence.

18          UNIDENTIFIED MALE SPEAKER: Thank you.

19          THE COURT: Pardon me?

20          MR. KLAVER: I said thank you, Your Honor.  
21          This is William Klaver. Because I don't -- I don't  
22          believe a word they say so far. (inaudible) seems to  
23          me and all the (inaudible) that happens to help them.  
24          I don't -- I don't believe it. And -- and they kept  
25          us in the dark -- (inaudible due to bad audio). We

1 don't know.

2 THE COURT: Yeah.

3 MR. KLAVER: Thank -- thank you (inaudible).

4 THE COURT: Well, I -- I understand,  
5 Mr. Klaver, you've stated what I'm sure -- a thought  
6 that probably some of the other Plaintiffs have, is  
7 the timing does look suspicious.

8 So the -- so, first thing we need to figure  
9 out is whether evidence was truly lost or whether it  
10 still exists because it was preserved for the District  
11 Attorney's Office or for some other reason prior to  
12 the failure of that server.

13 But if evidence has been lost, we need to  
14 determine why it was lost. And to that end, I don't  
15 think there's anybody on this call that can shed any  
16 light on that. The Sheriff's Department has stated  
17 what their position is.

18 I think the only way for us to truly find  
19 that out would be to retain an independent third-party  
20 with -- forensic examiner who would have access to the  
21 server and could go in there and look at the reason it  
22 failed and whether that the information can be  
23 reconstructed or it can't be reconstructed.

24 But I'm hesitant to order that that be done  
25 until I know whether the evidence was actually lost or

1     whether it was already extricated from the server and  
2     is preserved somewhere between the DA's office and  
3     Hamilton County Sheriff's Office presently.

4             And, I guess, the third thing I would say is  
5     just to reiterate that until we are in a position to  
6     make that decision, I'll reiterate that the plans for  
7     this data was stored, the server that failed is a  
8     physical object. And what I repeated previously is  
9     that that physical object, the server where the data  
10    was stored, needs to be preserved, does not need to be  
11    changed in any way or altered. It does need to be  
12    accessible to people in the Sheriff's Department other  
13    than somebody who has custody and control of it, so  
14    that if we do need to bring in an independent third-  
15    party forensic examiner, it will be in an unaltered  
16    state from the point in time that I advised counsel  
17    not to let anybody make any changes to it through the  
18    time that the forensic examiner examines it.

19            So let me -- those are the three points I  
20    just made. And they're all directed to the County at  
21    this point. Be thinking about that for a second, and  
22    let me say one other thing before I forget about it.

23            Mr. Flores, you raise the point that you have  
24    served discovery requests on the County, and they  
25    haven't responded to your discovery requests. Let me

1 just add a little bit of context. Generally speaking,  
2 in Federal court -- I know you guys were in State  
3 court originally, but after you came to Federal court,  
4 normally discovery requests are placed in abeyance  
5 pending your discovery planning meeting.

6 I don't know at what point in time that you  
7 had a discovery planning meeting prior to the  
8 scheduling conference that we had fairly recently, but  
9 we addressed certain deadlines in the scheduling  
10 order. Or I should more accurately say Judge McDonagh  
11 (phonetic) did.

12 And so at this point in time, if -- if there  
13 are discovery requests that are overdue, talking to me  
14 about them in this hearing is -- is -- is not really  
15 helpful. It's not an action item for me, but if you  
16 file a motion to compel because somebody's overdue on  
17 some discovery requests or interrogatories, the Court  
18 will deal with that.

19 Right now I'm not aware of those motions  
20 being pending. So let -- before I go back to the  
21 County, Mr. Flores and Mr. Cavett, have you guys filed  
22 any motions to compel discovery requests here in  
23 Federal court?

24 MR. FLORES: For -- it's Robin Flores. I --  
25 I have not, Judge.

1 THE COURT: Couldn't understand you.

2 MR. CAVETT: John Cavett, I have not.

3 THE COURT: You -- you have not, Mr. Flores?

4 MR. FLORES: That's correct, I have not --

5 THE COURT: Okay. Well, if you -- yeah.

6 Well, that's what you're going to have to do if you  
7 feel like some of them are overdue. So -- so -- and  
8 that will tee up that issue.

9 Now, as -- as to the County, counsel, what --  
10 what does the County intend to do to try to determine  
11 whether information has actually been lost or whether  
12 it's within some combination of your control and that  
13 of Neil Pinkston?

14 MR. HOBBS: Your Honor, this is quite  
15 (inaudible) hearsay, but as think I tried say before  
16 and on previous occasions, we do not believe that any  
17 information -- I'm sorry, video information  
18 relative -- or documentation relative to these cases  
19 has, in fact, been lost.

20 We will endeavor to obtain -- I guess we're  
21 going to have to do -- (inaudible). I think the  
22 easiest thing for us to do is -- is compile everything  
23 we've got and send it to everybody. These cases are  
24 consolidated. We'll make sure everybody has  
25 everything we have.



1 THE COURT: All right. And let me ask, the  
2 discrepancy that I'm hearing is, is it sounds like for  
3 whatever reason that the DA's office may have more  
4 video footage than the -- than you -- you do. And  
5 when I say you, I'm talking to the Hamilton County  
6 Sheriff's Office.

7 MR. HOBBS: (Inaudible due to cross talking)  
8 And that may be correct. But now understand and  
9 pardon me for interrupting, I -- I am informed that  
10 everything the DA has, the sheriff has.

11 THE COURT: Well, I -- I need you to verify  
12 that.

13 UNIDENTIFIED MALE SPEAKER: (Inaudible due to  
14 cross talking).

15 UNIDENTIFIED MALE SPEAKER: That's actually  
16 what the sheriff has said all along. He just stated  
17 that he had a hundred and something hours, and now  
18 we're discovering that Pinkston has over 500. There's  
19 a discrepancy there.

20 MR. HOBBS: Is that Mr. Klaver? Is that  
21 Mr. Klaver?

22 MR. KLAVER: Yes, it was.

23 MR. HOBBS: Mr. Klaver, (inaudible due to  
24 cross talking).

25 UNIDENTIFIED MALE SPEAKER: You just said

1     that the -- that Sheriff's Department has the same  
2     thing as the district attorney has. You made that  
3     statement here today. You just stated that you had  
4     the same thing that the district attorney has.

5             THE COURT: Well, here -- here's the  
6     discrepancy. Earlier in the conversation counsel for  
7     the County indicated that they thought they had  
8     directionally about 180 hours of footage. And then --

9             MR. HOBBS: At least.

10            THE COURT: At least. But that's a pretty  
11     big difference from 500 hours that -- that we've also  
12     been told that the District Attorney's Office has.  
13     And so that's -- that's something that needs to be  
14     reconciled to see if -- if there's a difference  
15     between the amount of footage that the district  
16     attorney has and that which the Hamilton County  
17     Sheriff's Department has.

18            Because -- because we need to at best as  
19     possible re-create all of the footage that was lost  
20     from the server. And we -- and -- and the only way to  
21     do that is -- is -- is to figure out what footage  
22     still exists in any repository, whether it's the  
23     district attorney's office or the sheriff department  
24     or any other place it might exist.

25            And we need to look at it and determine

1       whether it reflects all of these stops that Mr. Wilkey  
2       made or whether it apparently does not reflect all the  
3       stops that Mr. Wilkey made.

4               UNIDENTIFIED MALE SPEAKER:   Your Honor --

5               THE COURT:   And -- and County let me just say  
6       this.   I mean, the legal duty that the County has is  
7       to preserve the evidence.   And at this point, I know  
8       evidence has been lost, but I -- the Court does not  
9       know in truth whether the evidence has been lost,  
10      whether it still exists, and the only persons who can  
11      tell me that are the county's attorneys.   That is your  
12      burden.

13              It -- I'm not blaming either one of you for  
14      failure of a server.   You had nothing to do with that.  
15      But as soon as these lawsuits were filed, you as the  
16      county's attorney had a duty to make sure that the  
17      County preserve this evidence.

18              Now that I know a server failed and video  
19      footage for two or three years has been lost, I need  
20      you to figure out what evidence was lost and let the  
21      Court know that.   That is your duty.

22              And I -- I can't say it strongly enough, but  
23      I'm not sure I'm making myself clear enough about  
24      this.

25              MR. HOBBS:   Yes, we are clear Your Honor.

1 THE COURT: Okay.

2 MR. HOBBS: We -- we will endeavor to provide  
3 everything we have, and we will report to the Court  
4 and the parties anything we think we do not have.

5 THE COURT: Okay.

6 MR. HOBBS: I (inaudible) we can do it.

7 THE COURT: How much time do you think you  
8 need, Counsel, to do that?

9 MR. HOBBS: Unfortunately, Your Honor, we  
10 don't know -- we don't know what tomorrow brings. We  
11 understand there's a meeting today. We may be -- we  
12 may be sent home. So I'm not --

13 THE COURT: Well, I'll tell you what. Why  
14 don't you -- what I'd like for you to do is, is  
15 provide a -- let's do a weekly status report on your  
16 efforts. I realize that the Covid 19 pandemic is  
17 greatly complicating everybody's work schedules. I  
18 get it. There's something that can be worked around.

19 This is a front-burner item, and is certainly  
20 not going to be an excuse for the -- for the Sheriff's  
21 Department to lose any other evidence that -- that we  
22 might need for these cases. So I think everybody  
23 understands that.

24 But it may, of course, result in some  
25 unavoidable delays when people are physically told

1     that they cannot come to work. That's a problem.  
2     Because we do need people physically to be present to  
3     review things.

4             So, Mr. Hobbs and Ms. Milling, I would ask  
5     that by Wednesday of next week you file a very short  
6     something status report with the Court letting us know  
7     of your efforts to compile the video footage that does  
8     exist to ensure that no evidence is lost, and, you  
9     know, what -- what your anticipated timetable will be.

10            And then we'll just -- we're going to stay on  
11     this until -- until we can figure out a realistic date  
12     by which this can be done.

13            MR. HOBBS: Your Honor, if I may -- if I may  
14     ask, I think it would be easier on everybody involved  
15     if we disseminated the information (inaudible) or  
16     documentation or video whatever as soon as we get it.  
17     We will start from scratch, and we will -- in some  
18     cases it's been provided, it does not matter.

19            MS. MILLING: Your Honor, would you be okay  
20     with us providing it without reviewing it and just say  
21     here, here's what we have?

22            THE COURT: Well, no. What I want you to  
23     do --

24            MS. MILLING: (Inaudible due to cross  
25     talking) --

1 THE COURT: Ms. Milling, hang on a second.  
2 The risk in doing it piecemeal is that we're not going  
3 to be able to figure out exactly what has been  
4 produced. What I'd like you to do is to compile  
5 everything to try to determine what's -- what has been  
6 lost and what still remains.

7 MR. KLAVER: Your Honor (inaudible) this is  
8 William Klaver. I would like to ask that any of the  
9 information goes to the Court because -- before it  
10 reaches any of us.

11 THE COURT: Well, here's -- Mr. Klaver, yeah,  
12 I understand what you're asking, but that's not how  
13 things work. Discovery generally is sent from one  
14 party to another. It -- the only thing unusual about  
15 the situation is that we have a situation where a  
16 server failed and lots of video footage was lost, and  
17 that's why the Court is intervening at this point.

18 I don't need all the information sent to me.  
19 What I need is a synopsis of what the County has done  
20 to find the lost evidence, and they need to look at it  
21 and then tell the Court what has been -- what they  
22 believe has been lost and what still remains, so  
23 that -- so that I can determine under rule 37(e) what  
24 additional steps the Court needs to do.

25 And that could take a variety of forms. It

1 may -- it may be me appointing a third-party forensic  
2 examiner to come in and see if other evidence can be  
3 reconstructed. So that's an option. And then another  
4 option is if I find that evidence has been lost under  
5 37(e), it may lead to some sanctions against the  
6 County.

7 But we don't need to talk about sanctions yet  
8 until we determine -- until we make a determination as  
9 to whether evidence has truly been lost or whether it  
10 can be reconstructed, okay? Everybody understand me?

11 UNIDENTIFIED MALE SPEAKER: Thank you, Your  
12 Honor.

13 THE COURT: All right.

14 MR. FLORES: Your Honor, this is Robin  
15 Flores. May I make a suggestion as to how that may  
16 occur as far as trying to just determine what they  
17 have and what's been lost?

18 THE COURT: Yeah, if you have a practical  
19 suggestion along those lines, go ahead.

20 MR. FLORES: Yes, sir. Again, I base this  
21 off my direct participation with the County and my  
22 client talking with the district attorney and my  
23 clients and the investigators is that the DA got over  
24 500-something hours of video evidence over a period of  
25 over a year involving Mr. Wilkey.

1           And it took some effort for the DA to get it,  
2     but they finally did. If we could use -- if the DA is  
3     going to cooperate with Mr. Hobbs and Ms. Milling, we  
4     can find out what the County has, what the DA actually  
5     has and then compare that to what the -- Ms. Milling  
6     and Mr. Hobbs, I believe that they are that they  
7     got -- in other words, if they -- if the County has  
8     180 hours that they can put their hands on, and the  
9     district attorney has about 300 hours more, then we --  
10    that may give us a starting point as to what -- what  
11    the County can do from that point on to find out if  
12    the rest of this information, you know, the other  
13    300-plus hours are missing.

14           That may be a starting point if I could  
15    suggest that. And if the DA will cooperate. Sounds  
16    like they would -- they would, but that's just a  
17    suggestion.

18           THE COURT: Well, I -- I -- thank you,  
19    Mr. Flores. I think that's what I did suggest was a  
20    comparison of those two banks of data, the -- that the  
21    DA has in his possession and compared those that the  
22    Hamilton County Sheriff's Department has in its  
23    possession.

24           I do think that the comparison needs to be  
25    made. And then I think the Sheriff's Department needs



1 to also really think about whether there's any other  
2 place that these -- that any of this video evidence or  
3 other evidence related to these incidents may exist.

4 And -- and I would say this to the county's  
5 attorney, if -- I would not anticipate any resistance  
6 from the -- from the from the DA, but this is -- this  
7 is the Hamilton County Sheriff's Department's  
8 evidence.

9 I presume that the only reason the DA has it  
10 is because it was given to them by the Hamilton County  
11 Sheriff's Office. And at some point the Hamilton  
12 County Sheriff's Office lost its copy of that  
13 evidence. Or some of it.

14 And so I wouldn't anticipate that the DA  
15 would have a problem with restoring to the County a  
16 copy of whatever evidence the sheriff's department has  
17 given to the DA. But if you do run into a problem  
18 with that, let the Court know and maybe we'll try and  
19 help work it out.

20 MS. MILLING: We will, Your Honor.

21 THE COURT: All right, Counsel. I think we  
22 have a -- I believe we have a plan in place to try to  
23 recover the lost evidence and determine what was lost.

24 Is there -- while we're convened here  
25 together, does anyone else have anything they would

1     like to bring up?

2             UNIDENTIFIED MALE SPEAKER:   Your Honor, are  
3     you going to put this into an order?

4             THE COURT:   Yes.

5             UNIDENTIFIED MALE SPEAKER:   That would be --

6             MR. KLAVER:   It's William Klaver.   I -- I  
7     have nothing, Your Honor.

8             THE COURT:   Okay.   All right, then.   We will  
9     adjourn this hearing, and I appreciate everybody's  
10    cooperation.   You guys did good job not talking over  
11    each other, and I just would hope everybody will stay  
12    safe and healthy.   Thank you.

13  
14                   (Hearing concluded.)  
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## R E P O R T E R ' S   C E R T I F I C A T E

STATE OF TENNESSEE

COUNTY OF RUTHERFORD

I, Denise Parker Gonzalez, Licensed Court Reporter, with an office in Murfreesboro, Tennessee, certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter as provided to me by counsel for the plaintiff.



DENISE PARKER GONZALEZ  
Paradox Reporting  
Tennessee Licensed Court Reporter  
LCR#578, Expires 06/30/2016  
Notary Public  
State of Tennessee at Large  
My Commission Expires 04/24/2018

abeyance

being

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<p>abeyance (47:4)  able (21:14)(21:25)(29:8)(29:9)(33:13)(34:3)(34:23)(42:21)(54:3)  above-captioned (1:16)  above-entitled (59:9)  absolute (38:6)  absolutely (43:7)  abstract (30:9)  access (34:23)(45:20)  accessible (22:5)(46:12)  accompanying (12:3)  accurately (47:10)  act (43:20)  action (13:12)(47:15)  activating (5:2)  actual (41:4)  actually (19:16)(41:9)(42:4)(43:13)(45:25)(48:11)(49:15)(56:4)  adas (40:16)  add (47:1)  additional (17:22)(18:13)(42:15)(54:24)  address (4:25)  addressed (47:9)  addresses (17:15)  adhered (16:11)  adjourn (58:9)  advise (15:11)  advised (46:16)  advising (40:3)  affirmative (14:22)(14:23)  after (16:12)(23:2)(33:16)(47:3)  afterwards (24:2)  again (4:19)(12:23)(23:25)(25:15)(31:9)(37:3)(39:15)(55:20)  against (13:5)(24:15)(27:8)(28:1)(29:24)(31:18)(41:12)(42:23)(43:5)(43:16)(43:24)(55:5)  ago (32:10)  agree (10:6)  ahead (6:6)(8:2)(25:17)(55:19)  ain't (9:18)  all (3:3)(4:4)(6:8)(7:25)(8:1)(8:14)(9:4)(9:10)(9:15)(9:19)(9:22)(10:3)(10:13)(10:25)(11:3)(11:7)(11:16)(12:11)(12:19)(13:24)(14:15)(14:16)(15:18)(17:9)(17:10)(20:9)(21:9)(22:3)(22:6)(23:1)(23:20)(25:24)(26:4)(26:7)(26:10)(27:3)(30:23)(31:22)(32:11)(32:14)(34:11)(35:10)(35:19)(37:15)(37:25)(38:23)(39:19)(42:22)(43:22)(44:23)(46:20)(49:1)(49:16)(50:19)(51:1)(51:2)(54:18)(55:13)(57:21)(58:8)  allegations (15:1)(42:23)(43:19)(43:23)  allege (14:18)(27:7)  alleged (43:20)  allowing (11:15)  almost (33:3)(33:4)  along (49:16)(55:19)  already (42:19)(44:10)(46:1)  also (7:24)(9:25)(10:11)(11:25)(29:6)(34:18)(36:7)(36:23)(37:19)(50:11)(57:1)  altered (46:11)  among (5:13)(42:24)  amount (24:3)(50:15)  analysis (18:23)  another (8:7)(10:12)(17:7)(40:19)(54:14)(55:3)  answer (13:20)(18:25)(20:15)(28:9)  anticipate (57:5)(57:14)  anticipated (16:11)(53:9)  anticipation (14:9)(17:19)  any (3:10)(4:4)(6:1)(6:3)(6:10)(6:11)(7:5)(7:11)(8:23)(10:15)(11:4)(14:10)(16:4)(16:5)(16:17)(18:6)(18:12)(19:3)(19:4)(19:7)(20:2)(20:24)(23:12)(24:4)(24:19)(24:20)(25:3)(27:25)(37:7)(43:24)(45:15)(46:11)(46:17)(47:22)(48:16)(50:22)(50:24)(52:21)(54:8)(54:10)(57:1)(57:2)(57:5)  anybody (25:3)(45:15)(46:17)  anyone (18:21)  anyone (3:4)(57:25)  anything (14:2)(28:17)(39:2)(52:4)(57:25)</p>	<p>anyway (38:19)  apology (33:24)  apparently (12:19)(12:20)(27:21)(51:2)  appear (13:23)  appears (13:3)  appointing (55:1)  appreciate (58:9)  approximately (34:7)(40:1)  april (28:16)  archives (43:15)  are (4:4)(5:14)(6:3)(6:11)(7:5)(7:6)(8:23)(9:1)(10:13)(10:22)(11:4)(11:10)(13:8)(15:5)(16:5)(20:19)(21:4)(21:10)(21:13)(23:18)(24:6)(24:14)(25:9)(25:12)(25:13)(26:11)(28:16)(30:17)(30:19)(31:13)(31:25)(32:15)(33:3)(33:22)(34:2)(34:18)(36:2)(36:11)(38:11)(46:5)(46:19)(47:4)(47:13)(48:7)(48:23)(51:11)(51:25)(52:25)(56:6)(56:13)(58:2)  argue (18:20)  argument (13:21)  arises (13:19)(14:8)(14:10)(14:13)  arose (23:3)  around (52:18)  arrest (26:17)  arrests (26:10)(27:9)  ask (3:19)(3:24)(5:18)(5:22)(10:18)(10:22)(13:22)(14:3)(23:16)(26:6)(27:2)(27:17)(35:22)(36:20)(39:5)(39:6)(40:18)(42:1)(49:1)(53:4)(53:14)(54:8)  asked (4:25)(5:3)(17:25)(38:18)(41:5)  asking (27:9)(54:12)  assistant (34:14)  assume (9:7)(30:21)(38:23)  assure (17:11)(20:11)(44:14)  attached (22:21)(28:5)(36:17)  attacks (27:25)  attempting (9:1)  attend (4:21)  attorney (8:15)(26:3)(28:19)(30:3)(30:10)(30:23)(31:14)(33:8)(33:11)(34:3)(34:15)(35:1)(35:6)(40:14)(43:15)(50:2)(50:4)(50:16)(51:16)(55:22)(56:9)(57:5)  attorneys (6:1)(6:3)(8:23)(17:9)(21:25)(28:1)(43:11)(51:11)  attorney's (29:7)(30:19)(31:6)(42:20)(45:11)(50:12)(50:23)  audio (1:17)(33:21)(44:25)  available (22:9)(27:15)(42:25)  avoid (16:16)(25:16)  aware (4:25)(33:7)(33:9)(47:19)</p>
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	<p>back (7:21)(9:14)(10:22)(11:1)(22:1)(22:2)(22:4)(24:10)(24:12)(27:20)(28:10)(36:12)(44:4)(47:20)  backdrop (13:5)  background (25:16)  backseat (36:12)(37:8)  backup (21:3)  bad (43:20)(44:25)  banks (56:20)  baptism (41:4)(43:4)  base (55:20)  basis (34:20)  beating (20:23)  because (4:21)(5:15)(10:5)(10:6)(10:17)(11:20)(17:20)(18:9)(18:24)(19:2)(20:9)(21:1)(25:4)(26:12)(30:3)(32:6)(33:4)(37:24)(40:16)(40:19)(42:3)(42:11)(44:21)(45:10)(47:16)(50:18)(53:2)(54:9)(57:10)  been (15:19)(15:24)(16:7)(17:19)(18:19)(19:6)(22:18)(23:24)(26:2)(28:14)(29:7)(29:8)(29:9)(29:13)(30:2)(30:3)(32:6)(32:14)(32:20)(32:24)(35:18)(35:19)(37:23)(37:24)(38:4)(40:25)(42:10)(42:11)(42:19)(42:21)(43:25)(44:4)(44:5)(44:11)(45:13)(48:11)(48:19)(50:12)(51:8)(51:9)(51:19)(53:18)(54:3)(54:5)(54:21)(54:22)(55:4)(55:9)(55:17)  before (3:21)(10:19)(11:5)(11:10)(14:2)(16:22)(24:1)(32:15)(41:12)(46:22)(47:20)(48:15)(54:9)  behalf (7:15)(7:22)(8:11)(10:1)(11:12)(11:24)  being (5:14)(10:14)(12:22)(13:16)(13:18)(16:21)(16:24)(17:5)(20:19)(22:24)(25:12)(25:20)(30:17)(33:13)(34:23)(47:20)</p>

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 (26:2)(27:14)(27:15)(34:20)(36:2)(40:21)(44:22)(44:24)  
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 believed (15:10)(19:19)  
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